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09/547,661

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William T. Rowse

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BROOKS KUSHMAN P.C./FGTL
1000 TOWN CENTER
22ND FLOOR
SOUTHFIELD, MI 48075-1238

EXAMINER

OUELLETTE, JONATHAN P

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: WILLIAM ROWSE, BARRY INMAN, DEBRA MAYBERRY,
DAVID PARK, HENRY UBIK, PAUL MASHNI and
ROBERT JACKSON

Application No. 09/547,661
Technology Center 3600

Mailed: November 18, 2008

Before KRISTA ZELE *Deputy Chief Appeals Administrator*
ZELE, *Deputy Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on September 15, 2008. A review of the application revealed that it is not ready for docketing as an appeal.

Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF

Summary of Claimed Subject Matter

Appellant filed an Appeal Brief dated January 17, 2006. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004.

According to 37 CFR § 41.37(c) (v), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. While reference to page and line number of the specification **>requires< somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application. >For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of claimed subject matter” appearing on pages 2-3 of the Appeal Brief filed January 17, 2006, is deficient because it does not

separately map independent claim 40 to the specification. Correction is required.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

Grounds of Rejection

A review of the file finds that the grounds of rejection of the claims as provided in the Appeal Brief filed January 17, 2006, under the heading "Grounds of rejection to be reviewed on appeal" is unclear and/or is not consistent with the grounds of rejection of claims of record. The grounds of rejection of the claims as provided in the Appeal Brief must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Each Grounds of rejection to be reviewed on appeal must be identified.

A review of the last Office action mailed November 2, 2005, finds that the following grounds of rejections were discussed as follows:

Claims 1 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bunte et al. (US 6,330,975 B1) in view of Xactware (www.xactware.com, retrieved from the Internet Archive Wayback Machine www.archive.com/6/29/1998);

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bunte in view of Chainer (US 6,397,334 B1);

Claims 7-9, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bunte in view of Xactware, and further in view of in view of Bradbury;

Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bunte, in view of Xactware, in view of Bradbury, and further in view of Harvey (US 6,208,507 B1);

Claim 38 is rejected under 35 U.S.C. 103 as being unpatentable Over Bunte in view of Xactware; and

Claims 40 and 42-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bunte, in view of Chainer (US 6,397,344 B1) in view of Bradbury (US 5,442,512).

It should be noted that the Appellants have not discussed each grounds of rejection and has improperly listed the rejections as follows: claims as 1, 4, 5, 7-14, 38, 40 and 42-45 under 35 U.S.C. 103(a) in view of Xactware (www.xactware.com) combined with Bunte (U.S. 6,330,975), Chainer (U.S. 6,397,334), DiRienzo (U.S. 6,076,066), Bradbury (5,442,512) and/or Harvey (U.S. 6,208,507) . Correction of the Grounds of rejection to be reviewed on appeal for all claims is required.

Arguments

A review of the file finds that the arguments with respect to each grounds of rejection as provided in the Appeal Brief filed January 17, 2006, under the heading “Argument” have not been clearly provided. Each grounds of rejection must be treated under a separate heading in accordance with 37 CFR 41.37(c)(1)(vii). Any claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number.

Appellant has not provided the necessary headings and/or subheadings for arguments which correspond to each grounds of rejection. *See also Manual of Patent Examining Procedure* (MPEP) § 1205.02 (8th ed. Rev. 6, Sept 2007) for details.

EXAMINER’S ANSWER

Evidence Relied Upon

Section §1207.02 of the *Manual of Patent Examining Procedure* (MPEP) (Eighth Edition, Rev. 6, September 2007) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER’S ANSWER. The examiner’s answer is required to include, under appropriate headings, in the order indicated, the following items:

....

- (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner's Answer mailed April 4, 2006, is deficient because the "Evidence Relied Upon" section fails to include the references, Bunte (US 6,330, 975), Xactware, Chainer (US 6,397,334) Brandbury (US 5,442,512) and Harvey (US 6,208,507) cited on pages 3-7 in the Examiner's Answer's grounds of rejection for claims 1, 4, 5, 7-14, 38, 40 and 42-45 under 35 USC § 103(a).

Appropriate correction is required.

Grounds of Rejection

A review of the file finds that the grounds of rejection of the claims as provided in the Examiner's Answer mailed April 4, 2006, under the heading "Grounds of rejection" is not consistent with the grounds of rejection of claims set forth in the last Office action of record. The grounds of rejection of the claims as provided in the Examiner's Answer must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Each Grounds of rejection to be reviewed on appeal must be identified and any withdrawn rejections must be provided under a separate heading "Grounds of Rejection

Withdrawn” in the Examiner’s Answer. See also Manual of Patent

Examining Procedure (MPEP) § 1207.02 (8th ed. Rev. 6, Sept 2007) for details.

INFORMATION DISCLOSURE STATEMENT

Appellant filed an Information Disclosure Statement (IDS) dated March 19, 2001, August 16, 2001 and January 12, 2004. There is no indication on the record that the Examiner has considered the above Information Disclosure Statements. MPEP § 609 requires the Examiner to consider any Information Disclosure Statement filed by Applicant if timely submitted. A written communication notifying Appellant of the Examiner’s consideration of the above Information Disclosure Statements is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

1) hold the Appeal Brief filed on January 17, 2006 defective;

2) notify the Appellant to submit a Supplemental Appeal Brief which corrects the Appeal Brief’s Summary of Claimed Subject Matter under 37 CFR §41.37(c)(1)(v);

3) notify Appellant to file a Supplemental Appeal Brief properly addressing the Grounds of rejection of all claims;

4) notify Appellant to file a Supplemental Appeal Brief properly presenting the arguments for each grounds of rejection as required;

5) acknowledge and consider the Supplemental Appeal Brief submitted by Appellant to correct the Appeal Brief;

6) vacate the Examiner's Answer mailed April 4, 2006 and issue a new Examiner's Answer citing the missing references listed under the Evidence Relied Upon section, paragraph (8);

7) generate a new Examiner's Answer setting forth the correct Grounds of rejection and to correct other sections of the Answer as may be required;

8) consider the Information Disclosure Statement filed March 19, 2001, August 16, 2001 and January 12, 2004; and

9) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

Application No. 09/547,661

KZ/tsj

BROOKS KUSHMAN P.C./FGTL
1000 TOWN CENTER
22ND FLOOR
SOUTHFIELD, MI 48075-1238